

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
vs. Plaintiff,) NO. CR-15-00240-001-HE
ENRIQUE MARTINEZ-FLORES,)
Defendant.)

ORDER

Defendant Flores pled guilty to illegally reentering the United States in 2016 and was sentenced to 48 months in prison. The Tenth Circuit dismissed his *pro se* notice of appeal as untimely and defendant's subsequent 28 U.S.C. § 2255 habeas petition was denied. Defendant then filed a motion seeking credit on his federal sentence for the time he spent in ICE custody. The court construed defendant's motion as one seeking relief pursuant to 28 U.S.C. § 2241 and 18 U.S.C. § 3585(b) and referred it to Magistrate Judge Shon T. Erwin for further proceedings pursuant to 28 U.S.C. § 636(b)(1)(B); Fed.R.Civ.P. 72(b).

The magistrate judge has issued a Report and Recommendation in which he concludes that defendant filed this action in the wrong judicial district. A § 2241 motion, he states, typically challenges the execution of a sentence, not its validity, and must be filed in the district where the defendant is confined. Because defendant seeks credit for time spent in ICE custody, the magistrate judge determined he is attacking the execution of his sentence. Defendant is currently confined at Giles W. Dalby Correctional Institution – MTC in Post, Texas. He therefore could not properly file his § 2241 motion in this federal

district and the court lacks jurisdiction to consider it. Franklin v. United States, 72 Fed. Appx. 736, 738 (10th Cir. 2003).

Defendant failed to object to the Report and Recommendation. He thereby waived his right to appellate review of the factual and legal issues it addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010); *see* 28 U.S.C. §636(b)(1)(C).

The magistrate judge recommended that defendant's motion be dismissed. The court can, though, transfer the action "if the transfer is in the interest of justice." *Id.* (internal quotation marks omitted). As defendant possibly may be entitled to some relief, the court concludes that transfer pursuant to 28 U.S.C. § 1631 is appropriate here.

Accordingly, the court adopts the Report and Recommendation of Magistrate Judge Erwin as follows. The court concludes it lacks jurisdiction over defendant's § 2241 motion. In the interest of justice the court transfers this action to the United States District Court for Northern District of Texas.

IT IS SO ORDERED

Dated this 26th day of September, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE